

*KIRTON LAW FIRM*

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**MEMO ENDORSED**

November 14, 2022

VIA ELECTRONIC FILING

Honorable Sidney H. Stein  
United States District Judge  
Daniel Patrick Moynihan  
United States Courthouse  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

*11/14/22  
Defense counsel is mistaken. The government's position  
is that "an above guidelines sentence of imprisonment is  
necessary and appropriate." Gov't submission of Oct 11, pgs 1, 8-10.  
Nonetheless, def. brief is due Nov 21; gov't brief Nov 28;  
sentencing adjourned to December 2 at 4:30 p.m.*

*So ordered  
Sidney H. Stein  
U.S.D.S.*

Re: *United States v. DuVaughn Wilson, 21 cr. 249 (SHS)*

Dear Judge Stein:

I represent DuVaughn Wilson in the above-referenced matter. Mr. Wilson pleaded guilty, and his case was adjourned to November 15, 2022, for a sentencing hearing. The parties have submitted sentencing memoranda. The Court noticed both parties today that it is contemplating an upward departure pursuant to Application Note 13 (c) to USSG 2K2 (1)(b)(5). The Defense requests a two-week adjournment of the sentencing to allow the parties to comment regarding the Court's Notice.

The Probation Department recommended a 30-month sentence based on a guidelines range of 30-37 months.<sup>1</sup> The Defense, pursuant to 18 USC 3553 a, requested a sentence below the Guidelines range of 30-37 months.<sup>2</sup> The Government requested a sentence within the Guidelines range of 30-37 months.<sup>3</sup> The Court notified the parties that it is contemplating an upward departure pursuant to Application Note 13 (c) of USSG 2K2.1.<sup>4</sup> The Defense requests a two-week adjournment of tomorrow's sentencing hearing that would allow the parties to respond to today's Court Notice. The Guidelines are no longer mandatory.<sup>5</sup> However, the

<sup>1</sup> *US PACER Docket Entry #224.*

<sup>2</sup> *US PACER Docket Entry #238.*

<sup>3</sup> *US PACER Docket Entry #246.*

<sup>4</sup> *US PACER Docket Entry #270.*

<sup>5</sup> *See Booker citations omitted.*

Probation Department recommended a sentence at the low end of the Advisory Guidelines.<sup>6</sup> An upward departure, while theoretically possible in all criminal cases, was not reasonably contemplated by the Defense. A sentence of greater than 37 months will have a significant impact on Mr. Wilson and his family. We believe that he would suffer prejudice if he were not given adequate time to address this Court's Notice. We request a two-week adjournment. If granted, the Defense will file a supplemental brief in one week, and the Government is free to respond one week thereafter. The Government takes no position regarding our request. This is our second request to adjourn the sentencing hearing.

Please contact me if you have any questions or concerns.

Sincerely,

  
Marlon G. Kirton, Esq.

cc: Ashley Nicholas, Assistant United States Attorney (via electronic mail).  
Matthew King, Assistant United States Attorney (via electronic mail).  
D. Andrew Marshall, Esq. (via electronic mail).

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<sup>6</sup> *Id.* Final Probation Report.